

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

Estate of JAMES WILLIAM  
CHATELAIN, Deceased.

MARK D. WARSHAW et al.,

Plaintiffs and Respondents,

v.

SUSAN K. ASHABRANER,

Objector and Appellant.

B295318

(Los Angeles County  
Super. Ct. No. BP157870)

APPEAL from an order of the Superior Court of  
Los Angeles County. Clifford L. Klein, Judge. Affirmed.

Law Office of Susan K. Ashabraner and Susan K.  
Ashabraner for Objector and Appellant.

Jaquelynn C. Pope for Petitioners and Respondents.

Susan K. Ashabraner (appellant) appeals from the probate court's order, issued pursuant to Probate Code section 10811<sup>1</sup> on November 27, 2018, allowing \$48,625 in compensation to respondents Mark D. Warshaw and Jaquelynn C. Pope (doing business as Warshaw & Pope and referred to collectively as respondents), for extraordinary services related to the estate of James William Chatelain. We affirm the order.

## **BACKGROUND**

### **The parties**

James Chatelain (James) died on September 22, 2014. He was predeceased by his wife of 28 years, Janet Chatelain (Janet), who died on June 23, 2013. Both James and Janet died intestate. They did not have children.

Appellant is Janet's sister. Respondents are the attorneys for Jill Chatelain (Jill), the administrator of James' estate, and the special administrator of Janet's estate. Jill is James' sister.

## **PROCEDURAL HISTORY**

### **Prior appeals**

In a prior consolidated appeal, appellant challenged the probate court's orders denying her petitions for a determination of her entitlement to certain assets in James' estate. This court affirmed those orders. (*Estate of Chatelain* (June 24, 2019, mod. on June 25, 2019, B285456, B288714 [nonpub. opn.].)

### **Accounting**

On August 31, 2016, Jill, as the administrator of James' estate, filed verified petitions for approval of a final accounting and to distribute and close the estate. Appellant filed verified objections to the petitions. In response, respondents prepared

---

<sup>1</sup> All further statutory references are to the Probate Code.

and submitted on Jill's behalf responses to appellant's objections and a supplemental response to the accounting objections. Respondents also submitted supplements to the accounting, in response to both appellant's objections and the probate court attorneys' notes. Appellant filed objections to all of the accounting supplements.

### **Petition for extraordinary compensation**

On April 23, 2018, respondents filed a verified petition for allowance of extraordinary attorney fees in the amount of \$68,175<sup>2</sup> for the period from June 2016 through December 2017. The amount requested consisted of \$8,625 in fees related to the administration of Janet's estate, \$51,875 related to the accounting for James' estate, and \$7,675 related to defense of a prior petition for extraordinary compensation.

Appellant filed verified objections to respondent's petition, and multiple exhibits in support of her objections.

On May 10, 2018, the trial court set the hearing for respondents' extraordinary fees petition and the accounting for James' estate for September 5, 2018.

### **Hearing on petition and accounting**

At the time of the September 5, 2018 hearing, appellant's appeals from the orders denying her petitions for entitlement to assets in James' estate were pending. Appellant argued that the probate court could not approve the final accounting until the pending appeals were decided. She asked the probate court to deny the accounting without prejudice. Appellant further argued that no extraordinary compensation should be allowed to

---

<sup>2</sup> Respondents' petition requested \$69,975 in extraordinary fees; however, they admitted that amount was in error and that the total amount requested was \$68,175.

respondents because the probate court had not yet approved the accounting, and because respondents' defense of the accounting did not benefit James' estate.

Following a two-day evidentiary hearing, the probate court took under submission the petition for extraordinary fees. The court deemed the accounting to be a "first account current as supplemented" from date of death through December 31, 2017, and continued the hearing on the final distribution of the estate until the outcome of appellant's then pending appeals.

On November 27, 2018, the probate court issued an order allowing respondents \$40,000 in extraordinary fees for the period June 2016 to December 31, 2017. The court also allowed, "per agreement of the parties," \$8,625 in extraordinary fees for services respondents rendered in connection with Janet's estate that enabled James' estate to recover a \$250,000 estate tax refund. The probate court's order states that the \$8,675 "shall be awarded to Jan Chatelain's estate but shall be paid from James Chatelain's estate." The court further ordered that respondents be reimbursed \$435 in costs.

This appeal followed.

### **CONTENTIONS ON APPEAL**

Appellant contends the probate court abused its discretion by allowing \$40,000 in extraordinary fees to respondents because (1) the fees related to defense of an accounting that had not been finalized or approved; (2) respondents improperly received \$5,000 from estate funds without prior court approval and failed to reduce their request for final statutory compensation by that amount; (3) respondents misappropriated a \$3,440 check that belonged to the estate; and (4) respondents filed a "falsified"

stipulated order authorizing Jill to pay respondents \$40,000 from James' estate funds as an advance for statutory fees.

Appellant further contends the \$8,625 extraordinary fee allowance was improperly granted because appellant never agreed to the fee award; respondents failed to serve proper notice of their fee petition; and the fees incurred were for Jill's personal benefit and not for the benefit of the estate.

## **DISCUSSION**

### **I. Applicable law and standard of review**

Section 10811 gives the probate court discretionary authority to allow fees for extraordinary services by an attorney for the personal representative of an estate. The statute provides in relevant part: "(a) Subject to the provisions of this part, in addition to the compensation provided by Section 10810,<sup>3</sup> the court may allow additional compensation for extraordinary services by the attorney for the personal representative in an amount the court determines is just and reasonable." (§ 10811, subd. (a).)

Examples of allowable extraordinary fees are set forth in California Rules of Court, rule 7.703(c) (rule 7.703). These include litigation to benefit the estate or to protect its interests,

---

<sup>3</sup> Section 10810 authorizes a "statutory" or "ordinary" fee for services rendered by the attorney for the personal representative in the typical probate case. The fee is based on a sliding scale of percentages of the value of the estate. (§ 10810; *Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1446, fn. 1 (*Gilkison*).)

and defense of the personal representative's accounting. (Rule 7.703(c)(3), (4).)<sup>4</sup>

Section 10832 authorizes the probate court to allow extraordinary fees before final distribution of the estate if certain conditions are met. It provides:

“Notwithstanding Sections 10830 and 10831, the court may allow compensation to the personal representative or to the attorney for the personal representative for extraordinary services before final distribution when any of the following requirements is satisfied:

(a) It appears likely that administration of the estate will continue, whether due to litigation or otherwise, for an unusually long time.

(b) Present payment will benefit the estate or the beneficiaries of the estate.

(c) Other good cause is shown.”

“The law with respect to the allowance of fees claimed for extraordinary services rendered in probate proceedings is well settled. The grant or denial of such fees is addressed to the sound discretion of the probate court. [Citations.]” (*Gilkison, supra*, 65 Cal.App.4th at p. 1448.) A reviewing court cannot substitute its judgment for that of the trial court. (*Id.* at p. 1449.)

---

<sup>4</sup> Rule 7.703(c)(3) and (4) state: “The following is a nonexclusive list of activities for which extraordinary compensation may be awarded to the attorney for the personal representative: [¶] . . . [¶] . . . (3) Litigation undertaken to benefit the estate or to protect its interests; [¶] (4) Defense of the personal representative's account.”

“To be entitled to relief on appeal from the result of an alleged abuse of discretion it must clearly appear that the injury resulting from such a wrong is sufficiently grave to amount to a manifest miscarriage of justice . . . .’ [Citation.] “A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. . . .” [Citations.]’ [Citation.]” (*Ibid.*)

## **II. Defense of accounting**

### ***A. Fee award before approval of accounting***

Appellant contends the probate court abused its discretion by allowing respondents \$40,000 in extraordinary compensation for defense of the accounting because the accounting had not yet been approved at the time of the extraordinary fee award. She concedes, however, that rule 7.703 does not require the probate court to approve the accounting before allowing compensation for extraordinary services rendered in defense of the accounting. Appellant provides no legal authority that would require such approval before an allowance of extraordinary fees.<sup>5</sup>

An interim award of extraordinary fees is expressly authorized by section 10832, which gives the probate court discretion to allow compensation for extraordinary services if “[i]t appears likely that administration of the estate will continue, whether due to litigation or otherwise, for an unusually long

---

<sup>5</sup> In her reply brief, appellant asserts that “other legal authorities do require approval in order to justify a pre-distribution allowance for extraordinary compensation” and cites to pages 26 through 35 of her own opening brief. The only case authority contained in those pages of appellant’s opening brief, *Gilkison*, does not support that assertion.

time.” (§ 10832, subd. (a).) The record shows that appellant’s then pending appeals caused the probate court to continue the petition for final distribution of the estate. Given these circumstances, the extraordinary fee allowance before final distribution of the estate was not an abuse of discretion.<sup>6</sup>

***B. \$5,000 and \$3,440 checks***

Appellant claims the \$40,000 extraordinary fee award for defense of the accounting was a “manifest miscarriage of justice” because (1) Jill advanced \$5,000 from estate funds to respondents as an interim allowance for statutory compensation without prior court approval and respondents failed to reduce their request for final statutory compensation by that amount; and (2) respondents misappropriated a \$3,440 check that belonged to the estate. The trial court considered and rejected these arguments. The record shows no abuse of discretion.

The evidence showed that Jill wrote respondents a \$5,000 check for fees incurred in a separate, unrelated matter but did so mistakenly from the estate’s account. When she realized the mistake, Jill reimbursed the estate with a personal check for \$5,000, payable to the estate’s bank account. Appellant stipulated that Jill reimbursed the estate within three weeks.

The evidence further showed that respondents received a \$3,440 refund check from an employment law firm that had

---

<sup>6</sup> Respondents claim the probate court approved the accounting after deeming it to be a “first account current as supplemented from date of death through December 31, 2017.” The record is unclear on the status of the accounting approval, and the probate court’s November 27, 2018 order does not mention the accounting. The probate court nevertheless had the authority to allow extraordinary fees to respondents under section 10832.



represented Janet. The check was made payable to Jill and to respondents. Respondents initially deposited the \$3,440 check in a personal bank account, transferred the funds to an attorney-client trust account, and ultimately deposited the funds in the proper estate account.

We do not reweigh the evidence. Rather, we consider the evidence in the light most favorable to the probate court's order, giving it the benefit of every reasonable inference and resolving all conflicts in favor of the court's determination. (*Estate of Young* (2008) 160 Cal.App.4th 62, 76.) The record discloses no abuse of discretion.

We decline to consider appellant's objection based on the probate court's June 18, 2018 order authorizing Jill, as administrator of James' estate, to pay respondents \$40,000 from estate funds as an advance on respondents' statutory attorney fees. Appellant stipulated to entry of that order and the record shows no objection to the order at the time it was entered or at any other time prior to this appeal.

### **III. \$8,625 award**

The \$8,625 allowance for extraordinary services respondents rendered to obtain a tax refund for James' estate was not an abuse of discretion. There was evidence that Jill became aware of an IRS program that would allow James' estate to obtain a refund of approximately \$250,000 in estate taxes by applying an unused exemption from Janet's estate. The unused exemption in Janet's estate could be applied to James' estate only if Janet's estate filed a tax return by January 2, 2018.

Jill informed appellant of the IRS policy and asked whether appellant would agree to serve as the special administrator of Janet's estate, sign the tax return for Janet's estate, and thereby

enable James' estate to obtain the estate tax refund. Appellant initially agreed but subsequently filed a petition for letters of general administration of Janet's estate. When a disagreement arose between Jill and appellant concerning reimbursement of commissions and administrative costs appellant claimed she might incur as administrator, Jill filed a separate petition to serve as special administrator of Janet's estate. Jill's petition was granted, and Jill signed and timely filed the tax return for Janet's estate that enabled James' estate to obtain an estate tax refund of approximately \$250,000. Respondent's services benefitted James' estate and enabled Jill to collect, preserve, and protect the estate's assets. (Rule 7.703(c)(9); *Estate of Turino* (1970) 8 Cal.App.3d 642, 647-648.) The probate court's allowance of fees for that purpose was not an abuse of discretion.

Appellant takes issue with language in the probate court's order awarding the \$8,625 "per agreement of the parties," and argues that she never agreed to any award of extraordinary fees, but objected that there should be no fee award related to the competing letters of administration. Although appellant objected to the fee award on specific grounds, she raised no objection to the amount of the award. To the extent there is any ambiguity in the probate court's order, we interpret it to mean that there was no disagreement between the parties as to the amount of the award. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133 [trial court order is presumed correct on appeal and all presumptions indulged in its favor].)

*Estate of Bloom* (1980) 107 Cal.App.3d 195 (*Bloom*), on which appellant relies, is distinguishable. Unlike *Bloom*, this case does not involve recovery of attorney fees from Janet's estate -- the subject of the competing letters of administration. The

probate court's order directs payment of the \$8,625 fee award from James' estate, which received the benefit of respondents' services in securing Jill's appointment as special administrator of Janet's estate and enabled James' estate to obtain the \$250,000 estate tax refund.

We reject appellant's argument that the \$8,625 extraordinary fee award was improper because respondents did not serve notice of their petition on Janet's mother, Joan Ashabraner, whom appellant claims is an heir to Janet's estate entitled to notice in Janet's estate administration. The probate court's order states that the \$8,625 shall be paid to respondents from James' estate, not Janet's estate. That Joan Ashabraner was entitled to special notice in Janet's estate is not relevant to proceedings in James' estate.

#### **DISPOSITION**

The November 27, 2018 order awarding respondents extraordinary fees is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
HOFFSTADT